**HIGH COURT OF UTARANCHAL AT NAINITAL**

**Special Appeal No. 66 of 2005**

1. State of Uttaranchal through Principal Secretary, P.W.D., Uttaranchal Shashan, Dehradun.
2. Chief Engineer, Level-1, Uttaranchal, P.W.D., Dehradun.
3. The Chief Engineer, Kumaon, P.W.D., Almora.
4. The Superintending Engineer, 29th Circle, Electrical and Mechanical Division, P.W.D. Haldwani, Nainital.
5. The Superintending Engineer, 53rd Circle, P.W.D. Nainital.
6. The Superintending Engineer, 22nd Circle, P.W.D. Nainital.
7. Executive Engineer / Nodel Adhikari, Provincial Division, P.W.D. Nainital.
8. Executive Engineer, Construction Division, P.W.D. Haldwani, Nainital.
9. Executive Engineer, Electrical and Mechanical Division, P.W.D., Haldwani. Nainital.

**....Appellants**

**Vs**

Pushkar Bhatt S/o Bacchi Ram and others.

**.....Respondents**

**With**

**(2) Special Appeal No.22 of 2004**

1. State of Uttaranchal through Secretary, P.W.D., Government of Uttaranchal, Dehradun.
2. Chief Engineer, Level-1, Uttaranchal, P.W.D., Dehradun.
3. The Chief Engineer, Kumaon, P.W.D., Almora.
4. The Superintending Engineer, 29th Circle, Electrical and Mechanical Division, P.W.D. Haldwani, Nainital.
5. The Superintending Engineer, National High way P.W.D., Nainital

6. Executive Engineer / Nodel Adhikari, Provincial Division, P.W.D. Nainital.
7. Executive Engineer, Electrical and Mechanical Division, P.W.D., Haldwani. Nainital.
8. Executive Engineer, National High Way (Kashipur Division) P.W.D. Udham Singh Nagar.
9. Assistant Engineer, National High way, P.W.D. Haldwani, Nanital.

**....Appellants**

**Vs**

Jhamman Lal S/o Sri Dukhi Ram and others

**.....Respondents**

**With**

**(3) Special Appeal No. 45 of 2004**

1. State of Uttaranchal through Principal Secretary, Public Works Department, Civil Secretariat, Dehradun.
2. Engineer in Chief, Public Works Department, Dehradun.
3. Chief Engineer, Public Works Department, Kumaon Region, Kumaon.
4. Superintending Engineer, 22nd Circle, P.W.D. Haldwani, Nainital.

....Appellants

**Vs**

Mithilesh Chandra Rai S/o Late J.N. Rai, R/o Nainital Club Out House, District Nainital. And others.

.....Respondents

**With**

**(4) Special Appeal No. 114 of 2004**

State of Uttaranchal through Secretary, Public Works Department, Govt. of Uttaranchal, Dehradun and others. **....Appellants.**

**Vs**

Ram Pal Singh S/o Sri Tika Ram and others.

**.....Respondents**

**With**

**(5) Special Appeal No. 115 of 2004**

State of Uttaranchal through Secretary, Public Works Department, Govt. of Uttaranchal, Dehradun and others. **....Appellants**

**Vs**

Puran Singh S/o Prem Singh working as Mate in PWD working in Khatima Division, Udham Singh Nagar..

**.....Respondents**

**With**

**(6) Special Appeal No. 116 of 2004**

Chief Secretary, Government of Uttaranchal, Dehradun and others. **.....Appellants**

**Vs**

Shiv Kumar S/o Sri Nakli Ram, Presently posted as Beldar, National Highway, Public Works Department, Roorkee, District-Haridwar.

**.....Respondents**

**With**

**(7) Special Appeal No. 118 of 2004**

State of Uttaranchal through its Secretary, Public Works Department , Govt. of Uttaranchal, Dehradun and others.

**....Appellants**

**Vs**

Mohd. Khan, S/o late Acchan Khan, at present working in driver in Construction Division, P.W.D. Haldwani, Nainital and others.

**.....Respondents**

**With**

**(8) Special Appeal No. 119 of 2004**

State of Uttaranchal through Secretary, P.W.D., Government of Uttaranchal, Dehradun and others.

**....Appellants**

**Vs**

Beer Sing (Beldar) S/o Sri Gaje Singh and others.

**.....Respondents**

**With**

**(9) Special Appeal No. 120 of 2004**

State of Uttaranchal through Secretary, Public Works Department , Govt. of Uttaranchal, Dehradun. And others. **....Appellants**

**Vs**

Sukh Deo Raj S/o Jaichand and others.

**.....Respondents**

**With**

**(10) Special Appeal No. 121 of 2004**

State of Uttaranchal through Secretary, Public Works Department, Govt. of Uttaranchal, Dehradun and others. **....Appellants**

**Vs**

Diwan Singh (Mate) S/o Sri Parveen Singh and others.

**.....Respondents**

**With**

**(11) Special Appeal No. 95of 2005**

State of Uttaranchal through its Secretary, Public Works Department , Dehradun and others.

**....Appellants**

**Vs**

Hardayal S/o Dayaram working as Beldar in Khatima Division, P.W.D.Udham Singh Nagar and others.

**.....Respondents**

**With**

**(12) Special Appeal No. 20 of 2005**

State of Uttaranchal through its Secretary, Public Works Department, Govt. of Uttaranchal, Dehradun and others.

**....Appellants**

**Vs**

Prem Ballabh (Mate) S/o Sri Umapati and others.

**.....Respondents**

**With**

**(13) Special Appeal No. 21 of 2005**

State of Uttaranchal through its Secretary, Public Works Department , Govt. of Uttaranchal, Dehradun and others.

**....Appellants**

**Vs**

Krishna Kumar Sanwal (Mate) S/o Sri Mathura Dutt and others. **.....Respondents**

**Coram:** **Hon'ble P.C. Verma, J.**
**Hon'ble B.S. Verma, J.**

**Dated: March 4, 2006**

The controversy involved in all these writ petitions is one and the same, hence they all are being disposed of by this common judgment.

All these Special Appeals have been filed by the State of Uttaranchal impugninig the judgment and order passed by the learned Single Judge.

Brief facts of the case-giving rise to the special appeals are that the respondents in all these appeals were appointed on daily wage basis in the establishment of appellants on the posts of Mate/Beldar and thereafter they were appointed in the work charge establishment. It was alleged by the appellant /respondents that since those employees were not entitled for the regular salary to be paid for such regular appointed employees unless and until their services were not regularized. The present appeal has been filed against the judgment and order of learned Single Judge by which he has disposed of the writ petition in the following terms:-

> *"Consenquently, the Government Order dated 26.08.1999 so far as it relates to the imposition of ceiling on dearness allowances requires reconsideration by the respondents in view of the observation made above as well as in view of the Government Order dated 01.01.2000 issued by the State of U.P. deleting paragraph 668 as mentioned above.*
> *In the meantime, respondents are directed to pay salary to the petitioners ignoring the ceiling*

*prescribed in view of the order of Division Bench dated 10.05.2002."*

We have heard learned counsel for the parties and perused the entire evidence on record.

In so far as the Government Order dated 26.08.1999 is concerned, by this Government Order after the amendment, the ceiling has been imposed increasing the limit and by the Government Order dated 01.01.2000, the provision relating to appointment of work charge employees and their payment contained in financial handbook has been deleted by the State of U.P. itself. Since both the above

Government Orders have been passed prior to the appointing date, therefore, they are in force in the State of Uttaranchal also and accordingly the ceiling is imposed on the Dearness Allowances in terms of the Government Order Dated 26.08.1999.

The respondent/petitioners have challenged the imposition of ceiling on dearness by the Government Order on various grounds including the ground that no ceiling can be fixed on the dearness allowance as it is paid on the basis of price index. The learned Single Judge has not adverted on the main ground and has issued the direction to the State Government to reconsider the Government Order dated 26.08.1999 so far as it relates to the imposition of ceiling on dearness allowances. It has further been directed that till the reconsideration is not done, the salary shall be paid to the petitioners/respondents ignoring the ceiling limit in view of the Division Bench

order dated 10.05.2002, which is the interim order. No reason has been assigned to depend on the interim order while disposing of the writ petition finally. In other words, the validity of the imposition of ceiling has not been gone into.

The question relating to payment of dearness allowance for the first time was settled by the Hon'ble Apex Court in 1962 in the case of ***"Hindusthan Motor Workers' Union Vs. Hindusthan Motors Ltd. and another, (1962) 2 LLJ 352"***. In this case, the Apex Court in Para-8 has held as under:

> ***"The whole purpose of dearness allowance being to neutralize a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the cost of living."***

The above judgment was passed by Hon'ble Three Judges and this judgment has been followed by Four Judges Bench in the year 1963 in the case of ***"Hindustan Times Ltd. Vs. Their Workmen, AIR 1963 Supreme Court 1332, Page 1332."*** The Apex Court has referred the aforesaid dictum of the Supreme Court and confirmed the same and held that dearness allowance shall be paid on a sliding scale and it may increase or decrease as increase or decrease in cost of living.

Sri K.P. Upadhayaya, learned standing counsel submitted that the work charge employees are not entitled for payment of dearness allowance in view of the law laid down by the Hon'ble Apex Court in the case of *"State of U.P. and others Vs. Balram Sahu and*

*others, 2003(1) SCC, Page 250"and in the case o f"State of U.P. and others Vs. Putti Lal, 2002, Vol-3, AWC 2375 (S.C.)".* The facts and circumstances of these cases are entirely different than that of the facts and circumstances in the present case. The judgments cited by learned standing counsel are relating to payment of minimum of pay scale over which the Hon'ble Apex Court has stated that no allowance shall be payable while in the present case, the Government has decided to pay the dearness allowance. In fact it is being paid but by Government Order dated 26.08.1999, a ceiling limit has been imposed. Hence, the argument of learned standing counsel cannot be sustained and is hereby rejected.

In view of the logic and concept for payment of dearness allowance as laid down by the Hon'ble Apex Court quoted above, no ceiling limit can be fixed on the dearness allowance and since the Government has taken a decision to pay the dearness allowance to the work charge employees, then it cannot fix a ceiling limit thereon. Thus, the Government Order dated 26.08.1999 fixing the ceiling limit is contrary to the law laid down by the Hon'ble Apex Court which is law of the land under Article 141 of the Constitution of India and cannot be sustained.

Thus, the Government Order dated 26.08.1999 is hereby quashed. The Special Appeals are dismissed. Consequently, the writ petitions are allowed. However, it is made clear that the petitioners / respondents shall not be paid regular salary but they shall be paid wages on the work charge

basis and the full dearness allowance thereon ignoring the ceiling.

**(B.S. Verma, J.)** **(P.C. Verma, J.)**

**Rajeev Dang**